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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,377	11/19/2003	Steven Driediger	1400.1375180	6705

25697 7590 07/26/2007  
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EXAMINER
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CHUNG, PHUNG M

ART UNIT	PAPER NUMBER
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2117

MAIL DATE	DELIVERY MODE
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07/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/717,377	Applicant(s) DRIEDIGER ET AL.	
	Examiner Phung My Chung	Art Unit 2117	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 March 2007 and 19 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19, 32-42 and 49 is/are allowed.
- 6) ☒ Claim(s) 20-31 and 43-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

**DETAILED ACTION**

***Election/Restrictions***

1. This office action is in response to the response to the examiner restriction dated on 4/26/07. The restriction requirement as set forth in the Office action mailed on 3/20/07 is hereby withdrawn.

***Claim Rejections - 35 USC § 112***

2. Claims 20-31 and 43-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 20, lines 3-13, "performing a first transmission unit counting process for determining a first datapath ingress transmission unit count and a first datapath egress transmission unit count of a datapath...during the first duration" is not clear whether the first datapath ingress transmission unit count and the first datapath egress transmission unit count in the same or different counting location of the datapath. Appropriate correction and/or clarification is required.

As per claims 21-31, these claims are rejected because they dependent upon the rejected base claim.

As per claim 43, lines 4 and 9, "capable of" a positive term should be used; and Line 11, there is no ending period at the end of the claim.

As per claims 43-48, these claims are rejected because they dependent upon the rejected base claim.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claim 43 is remain rejected under 35 U.S.C. 103(a) as being unpatentable over MacKay (U.S. Patent No. 4,052,566) in view of Pauwels (EP 1 109 366A1) as applied to claims 1-42 and 49 above, and further in view of Matsunaga et al (U.S. Patent No. 6,115,417). (See paragraph 3 of the office action dated on 6/17/06).

5. Claims 1-19, 32-42 and 49 are allowable.

6. Applicant's arguments filed on 12/10/06 have been fully considered but they are not persuasive because:

Claims 43, Applicant argues that MacKay reference fails to disclose "... wherein the first transmission counter set...is capable of facilitating a datapath ingress

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transmission unit count..." and "...wherein the second transmission unit counter set... is capable of facilitating egress transmission unit count..."

Examiner disagrees with applicant because it doesn't matter for the first and second transmission counter sets that are capable of or incapable of facilitating ingress and egress transmission unit counts. It does not affect the counters at the transmission units because they are just capable of but not used for counting the ingress and egress transmission unit counts.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phung My Chung whose telephone number is 571-272-3818. The examiner can normally be reached on Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacques Louis-jacques can be reached on 571-272-6962. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Phung My Chung', with a long horizontal flourish extending to the right.

Phung My Chung  
Primary Patent Examiner  
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